

Section 86-1.25 Research. (a) All research costs shall be excluded from allowable costs in computing reimbursement rates.

(b) Research includes those studies and projects which have as their purpose the enlargement of general knowledge and understandings, are experimental in nature and hold no prospect of immediate benefit to the hospital or its patients.

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Section 86-1.26 Educational activities. The costs of educational activities less tuition and supporting grants shall be included in the calculation of the basic rate provided such activities are directly related to patient care services.

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Section 86-1.27 Compensation of operators and relatives of operators. (a) Reasonable compensation for operators or relatives of operators for services actually performed and required to be performed shall be considered as an allowable cost. The amount to be allowed shall be equal to the amount normally required to be paid for the same service provided by a nonrelated employee, as determined by the State Commissioner of Health. Compensation shall not be included in the rate computation for any services which the operator or relative of the operator is not authorized to perform under New York State law and regulation.

(b) Any amount reported as compensation for services rendered by an operator or relative of an operator shall not be allowed in excess of the maximum allowance for full time services in carrying out his primary function.

(c) For purposes of subdivision (a) of this section, in determining a reasonable level of compensation for operators or relatives of operators, the commissioner may consider the quality of care provided to patients by the facility during the year in question.

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Section 86-1.28 [Costs of related] Related organizations. (a) A related organization shall be defined as any entity which the medical facility is in control of or is controlled by, either directly or indirectly, or an organization or institution whose actions or policies the facility has the power, directly or indirectly, to significantly influence or direct, or a special purpose organization, or where an association of material interest exists in an entity which supplies goods and/or services to the medical facility, or any entity which is controlled directly or indirectly by the immediate family of the operator. Immediate family shall include each parent, child, spouse, brother, sister, first cousin, aunt and uncle, whether such relationship arises by reason of birth, marriage or adoption. A special purpose organization shall be defined as an organization which is established to conduct certain of the facility's patient-care-related or non-patient-care-related activities. The special purpose organization shall be considered to be related if:

(1) the facility controls the special purpose organization through contracts or other legal documents that allow direct authority over the organization's activities, management and policies; or

(2) the facility is, for all practical purposes, the sole beneficiary of the special organization's activities. The facility shall be considered the special purpose organization's sole beneficiary if one or more of the three following circumstances exist:

(i) a special purpose organization has solicited funds in the name of and with the expressed or implied approval of the facility, and substantial funds solicited by the organization were intended by

the contributor or were otherwise required to be transferred to the facility or used as its discretion or direction;

(ii) the facility has transferred some of its resources to a special purpose organization, substantially all of whose resources are held for the benefit of the facility; or

(iii) the facility has assigned certain of its functions (such as the operation of a dormitory) to a special purpose organization that is operating primarily for the benefit of the facility.

(b) The costs of goods and/or services furnished to a medical facility by a related organization are included in the computation of the basic rate at the lower of the cost to the related organization or the market price of comparable goods and/or services available in the medical facility's region within the course of normal business operations.

(c) If the medical facility has incurred any costs in connection with a related organization, the final payment rate shall include the costs of such goods and/or services.

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Section 86-1.29 Return on investment. (a) In computing the allowable costs of a proprietary medical facility, there shall be included an allowance of a reasonable return on the average equity capital representing the investment by an owner used for the provision of patient care. The percentage to be used in computing the allowance shall be a rate determined annually by the commissioner as reasonably related to the then current money market.

(b) Equity capital is the net worth of the provider adjusted for those assets and liabilities which are not related to the provision of patient care. Equity capital consists of the provider's investment in plant, property and equipment, net of depreciation, and working capital for necessary and proper operation for patient care activities.

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Section 86-1.30 Capital cost reimbursement. The capital cost of a facility for purposes of determining and certifying the capital cost component of a rate shall be determined and computed in accordance with the provisions of sections 86-1.23, 86-1.24, 86-1.29, 86-1.59 of this Subpart and be certified and audited as actually having been expended; provided, however, that:

(a) with respect to a facility for which a rate has been determined and certified by the Commissioner of Health prior to March 10, 1975, the Commissioner of Health may continue such method and computation of such rate or make such modifications and changes to lower such rate as in his judgement are necessary and proper and in the public interest; and

(b) with respect to a facility which has been established by the Public Health Council, and for which a rate has not been determined and certified by the Commissioner of Health prior to the effective date of this section, and a legally binding arms length lease was the basis for the establishment approval granted by the Public Health Council, the Commissioner of Health may determine and certify a rate on the basis of such lease. A lease with a related organization described in subdivision (a) of section 86-1.28 of this Subpart shall be deemed to be a non-arms length lease.

(c)(1) The provisions of this section shall not apply to any facility which, as of the effective date of this Subpart, is located in and operated from leased space pursuant to a lease:

(i) which was entered into and approved for reimbursement prior to March 10, 1975;

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- (ii) which the commissioner finds to be bona fide, valid and noncancelable;
- (iii) the terms of which the commissioner finds to be fair and reasonable; and
- (iv) the payments, or portion thereof made pursuant to which, are found by the commissioner to be the proper basis for reimbursement of capital cost paid to such facility pursuant to article 28 of the Public Health Law prior to March 10, 1975.

(2) The capital cost component of any facility within the provisions of paragraph (1) of this subdivision shall consist of a payment factor sufficient to reimburse the facility for the total payments required under the base thereof to the extent approved by the commissioner pursuant to paragraph (1) of this subdivision.

(d) In the computation of rates for voluntary medical facilities which are rented from proprietary interests, capital reimbursement shall be computed as if the facility were operated under proprietary sponsorship, except where the realty was previously owned by the voluntary medical facility, or where the proprietary interest has representation on the board of directors of the voluntary medical facility.

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(f) Any capital expenditures associated with non-arms length leases shall be approved and certified to, if required, under the hospital certificate of need process. In the computation of reimbursement for non-arms length leases, the capital cost shall be included in allowable costs only to the extent that it does not exceed the amount which the facility would have included in allowable costs if it had legal title to the asset (the cost of ownership), such as straight-line depreciation, insurance, and interest. Accelerated depreciation on these assets may not be included in allowable costs under any circumstances.

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